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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jeffrey Taylor et al.

Title: METHOD AND SYSTEM TO IMPLEMENT SELLER AUTHORIZED BUYING  
PRIVILEGES WITHIN A NETWORK-BASED SHOPPING FACILITY

Docket No.: 2043.044US1  
Filed: June 15, 2001  
Examiner: Alain L Bashore

Serial No.: 09/881,911  
Due Date: N/A  
Group Art Unit: 1762

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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*Dawn L. Shaw*  
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(GENERAL)



**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

**TABLE OF CONTENTS**

	<u>Page</u>
<b><u>1. REAL PARTY IN INTEREST</u></b> .....	1
<b><u>2. RELATED APPEALS AND INTERFERENCES</u></b> .....	2
<b><u>3. STATUS OF THE CLAIMS</u></b> .....	3
<b><u>4. STATUS OF AMENDMENTS</u></b> .....	4
<b><u>5. SUMMARY OF CLAIMED SUBJECT MATTER</u></b> .....	5
<b><u>6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL</u></b> .....	6
<b><u>7. ARGUMENT</u></b> .....	7
<b><u>8. SUMMARY</u></b> .....	12
<b><u>CLAIMS APPENDIX</u></b> .....	13
<b><u>EVIDENCE APPENDIX</u></b> .....	19
<b><u>RELATED PROCEEDINGS APPENDIX</u></b> .....	20



PATENT

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**APPEAL BRIEF UNDER 37 CFR § 41.37**

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The Appeal Brief is presented in support of the Notice of Appeal to the Board of Patent Appeals and Interferences, filed on October 5, 2005, from the Final Rejection of claims of the above-identified application, as set forth in the Final Office Action mailed on August 5, 2005.

The Commissioner of Patents and Trademarks is hereby authorized to charge Deposit Account No. 19-0743 in the amount of 500.00 which represents the requisite fee set forth in 37 C.F.R. § 41.2(b)(2). The Appellants respectfully request consideration and reversal of the Examiner's rejections of pending claims.

## **1. REAL PARTY IN INTEREST**

The real party in interest of the above-captioned patent application is the assignee, eBay, Inc.

## **2. RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to Appellants that will have a bearing on the Board's decision in the present appeal.

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### **3. STATUS OF THE CLAIMS**

The present application was filed June 15, 2001 with claims 1-34. A Preliminary Amendment was filed May 27, 2003 amending claims 1-2, 4-9, 11-18, 20-25 and 27-34 and adding claim 35. A non-final Office Action was mailed on October 6, 2003. In a Response filed December 11, 2003, Appellants amended claims 9 and 25. An Office Action was mailed on March 4, 2004. In a Response filed July 6, 2004, Appellants amended claims 1, 2, 4-7, 9, 12-18, 20-23, 25, 29-35; cancelled claims 3 and 19; as a result claims 1, 2, 4-18, and 20-35 were pending. An Office Action was mailed on September 29, 2004. Applicant filed a response on January 28, 2005. A Final Office Action was mailed on August 5, 2005. In a Response filed October 5, 2005, Appellants amended claims 1, 2, 6, 7, 9, 15, 16, 18, 22, 23, 25, 31 and 34; claims 3 and 19 were already cancelled; as a result claims 1, 2, 4-18, and 20-35 were pending. Claims 1, 2, 4-18, and 20-35 stand twice rejected, remain pending, and are the subject of the present Appeal.

#### **4. STATUS OF AMENDMENTS**

Claims 1-2, 6-7, 9, 15-16, 18, 22-23, 25, 31 and 34 were amended in the Response After Final filed October 5, 2005 and were indicated to have been entered by the Examiner in the Advisory Action mailed to Appellants on November 2, 2005 for the purpose of the present Appeal.

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## **5. SUMMARY OF CLAIMED SUBJECT MATTER**

The present inventive subject matter includes, but is not limited to, methods and systems to implement seller authorized buying privileges within a network-based shopping facility. The invention may, in one example embodiment, find application in a networked-based commerce environment as shown in **Figure 1** and as described by way of example beginning on page 8 of the specification.

A method to pre-approve a bidder for network-based shopping may be implemented in an embodiment that includes a user interface to add an identifier 404, identifying the bidder, to a pre-approve bidders list (Figure 5, Paragraphs 34, 35; Figure 10, Paragraphs 45, 46). In one embodiment, the identifier 404 may include a bidder username (*Id.*, Paragraph 40). In another embodiment, the identifier 404 may include an email address (Paragraphs 38, 46).

The authorization may be recorded by registering the identifier 404 in an authorized bidders table 610 (Paragraph 40) that is stored in a database 23. The database 23 includes an authorized bidders table 610 for each item for which the seller has requested pre-approval of bidders (*Id.*). In one embodiment, the database 23 may be implemented as a relational database, and includes a number of tables having entries, or records, that are linked by indices and keys (Paragraph 39). In another embodiment, the database 23 may be implemented as a collection of objects in an object-oriented database (*Id.*).

In one embodiment, a buyer may be authorized to buy an offering offered for sale by the seller (Paragraph 21). In another embodiment, a buyer may be authorized to offer to buy an offering offered for sale by the seller (Paragraph 21). In one embodiment, a listing may include an item or a service (*Id.*).

This summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and its legal equivalents for a complete statement of the invention.



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## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1-4, 6, 10-11 and 13-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stewart (U.S. Publication No. 2001/0049634; hereinafter Stewart).

The Examiner rejected claims 1-4, 6, 10-11 and 13-35 based on Stewart. Applicant respectfully traverses the single reference rejection under 35 U.S.C. § 103 since not all of the recited elements of the claims are found Stewart. Since all the elements of the claim are not found in the reference, Applicant assumes that the Examiner is taking official notice of the missing elements. Applicant respectfully objects to the taking of official notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position.

## 7. ARGUMENT

Applicants respectfully submit that claims 1-4, 6, 10-11, 13-35 should not be rejected under 35 U.S.C. § 103(a) for the reason that cited references when combined do not teach or suggest all of the claim limitations of the independent claims of the present application and for the reason that an improper rationale has been proffered for modifying Stewart.

### *A) The Applicable Law under 35 U.S.C. §103(a)*

To establish a **prima facie** case of **obviousness**, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

To establish *prima facie obviousness* of a claimed invention, all the claim limitations must be taught or suggested by the prior art.

MPEP 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

"All words in a claim must be considered in judging the patentability of that claim against the prior art."

MPEP 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.

MPEP 2143.03 citing *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.

W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984), MPEP 2141.02

***B) Rejection of claim 1 under 35 U.S.C. § 103(a) as being taught or suggested by Stewart***

Claim 1 includes the following limitations:

*....receiving an authorization communication, over a network, at a network-based auction facility...*

*...the authorization communication to authorize the bidder to bid on a particular sale listing that is listed for sale by the seller*

The Final Office Action highlights the following quotes from Stewart:

[0057] Once the buyer member has become registered with one or more seller members, they will then be permitted to view and purchase from seller product catalogs....

Stewart, paragraph 57 (first quote).

[0099] When sellers have been identified and qualified to be seller members on the website, the individual buyers with which they have previously done business in the past can be contacted so as to become qualified buyer members on the site.

....

Stewart, paragraph 99 (second quote).

[0100] ....After the buyer member has logged into the site, an authorized individual can begin searching for the particular product needed...A search screen is presented to the buyer member ... and the website controller will display to the buyer member the seller member that offer such products, as well as the retail price .... The buyer member...can then decide which of the products it wishes to purchase and also designate, by clicking in the appropriate area, which products it wants to purchase...

Stewart, paragraph 100 (third quote).

The above three quotes from Stewart describe a buyer member that is registered/qualified/authorized to perform various activities on a website. The first quote describes a buyer member that is registered with one or more seller members. Once registered, the buyer member is permitted to view auction products from seller product catalogs and bid on auction products from seller product catalogs. The first quote does not describe how the buyer member becomes registered. The second quote from Stewart describes a seller member that contacts a buyer with whom the seller member has previously done business. The seller member contacts the buyer so the buyer may become a qualified buyer member on the site. The second quote does not describe how the buyer member becomes qualified. The third quote from Stewart describes a buyer member that has logged into a site and, if authorized, may search for and purchase products. The third quote does not describe how the buyer member becomes authorized.

***Stewart teaches away from the limitations of claim 1 by teaching individual authorization by particular sellers as eliminating the need for the seller member to repeatedly requalify a buyer member when each product order is enforced***

Further, Applicant respectfully submits that the Final Office Action is arguing on the basis of an improper rational (MPEP 2145 (X) (D)) for modifying Stewart. Indeed if

the teachings of Stewart are taken as a whole then Stewart explicitly teaches away from the limitations of claim 1 by teaching that an individual authorization by a particular seller eliminates the need to repeatedly qualify a buyer member when a product order is enforced. Stewart states,

“As only authorized buyers are able to purchase the products, each of those buyers must be individually authorized by the particular sellers thereby eliminating the need for the seller member to repeatedly requalify a buyer member when *each product order* is enforced” (emphasis added).”

Stewart, paragraph 91.

For this reason the Applicants respectfully submit that the teachings of Stewart, taken as a whole, teach away from the limitations of claim and therefore the Final Office Action is arguing on the basis of an improper rationale for modifying Stewart.

***Stewart fails to teach or suggest receiving an authorization communication over a network that authorizes a bidder to bid on a particular sales listing***

Claim 1 requires receiving an authorization communication over a network that authorizes a bidder to bid on a particular sale listing that is listed for sale by a seller.

In contrast to the limitations of claim 1, none of the above three quotes from Stewart describe receiving an authorization communication over a network, much less the further limitations of claim 1; but rather, the above three quotes from Stewart describe a buyer member that may be respectively registered, qualified and authorized. Further, Stewart fails to describe how registration, qualification or authorization is performed. Indeed the first quote describes a buyer member being permitted to view seller product catalogues and being permitted to purchase from seller product catalogues once registered; however, claim 1 requires receiving an authorization communication over a

network that authorizes a bidder to bid on a particular sale listing that is listed for sale by a seller.

The Final Office Action offers an explanation, “Since Steward [sic] discloses authorization for *all* sale listings, this encompasses a “particular” sale listing” (Final Office Action, page 5). Applicants respectfully disagree. An authorization of all sales listings is not the same as an authorization to bid on a particular sales listing.

Stewart therefore cannot be said to teach *or suggest* the above quoted limitation of claim 1 because Stewart describes an authorization of a buyer and claim 1 requires receiving an authorization communication over a network that authorizes a bidder to bid on a particular sale listing that is listed for sale by a seller.

The above remarks are also applicable to a consideration of independent claims 16, 17, 32, 33, 34, and 35. Accordingly, the Applicants request that the above remarks also be considered when examining these other independent claims for allow ability.

In summary, Stewart, does not teach or suggest each and every limitation of claims 1, 16, 17, 32, 33, 34, and 35 as required to support rejections of the independent claims of the present application under 35 U.S.C. § 103(a).

## 8. SUMMARY

In Summary, Stewart cannot be said to teach *or suggest* the above quoted limitations of claim 1 because Stewart describes an authorization of a buyer and claim 1 requires receiving an authorization communication over a network that authorizes a bidder to bid on a particular sale listing that is listed for sale by a seller. Further, the Final Office Action is arguing on the basis of an improper rationale for modifying Stewart because Stewart, taken as a whole, teaches away from the limitations of claim 1.

Respectfully submitted,

JEFFREY TAYLOR et al.

By their Representatives,

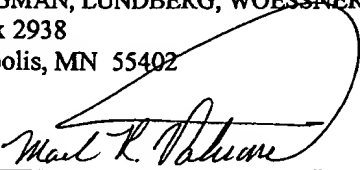
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

Date 12/5/2005

By

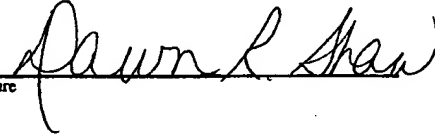
  
Mark R. Vatuone  
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Name

Dawn R. Shaw

Signature



### **CLAIMS APPENDIX**

1. (Rejected) A method to pre-approve a bidder for network-based shopping, the method including:  
  
receiving an authorization communication, over a network, at a network-based auction facility, the authorization communication to authorize the bidder to bid on a particular sale listing that is listed for sale by a seller; and  
  
at the network-based auction facility, automatically recording the bidder as authorized to bid on the particular sale listing responsive to the authorization communication.
2. (Rejected) The method of claim 1, wherein the network-based auction facility requires the seller to authorize the bidder before the bidder bids on the particular sale listing.
3. (Canceled)
4. (Rejected) The method of claim 1, wherein the authorization communication includes a seller request to authorize bidders to bid on the particular sale listing.
5. (Rejected) The method of claim 1, wherein the authorization communication includes allowing the seller to add and to remove an authorization restriction multiple times during an auction pertaining to the particular sale listing.
6. (Rejected) The method of claim 4, including receiving a request communication, the request communication including a bidder request to the seller to authorize the bidder to bid on the particular sale listing.



7. (Rejected) The method of claim 4, including providing access, to the seller, to a bidding history associated with the bidder and profile information associated with the bidder thereby to assist the seller in determining whether to authorize the bidder to bid on the particular sale listing.
8. (Rejected) The method of claim 7, wherein the bidding history and the profile information are provided by the network-based auction facility.
9. (Rejected) The method of claim 1, wherein the particular sale listing includes at least one listing from a group of listings including a charity listing, an events listing and a holiday promotions listing.
10. (Rejected) The method of claim 1, wherein the network includes the Internet.
11. (Rejected) The method of claim 10, wherein the network-based auction facility includes an auction web site.
12. (Rejected) The method of claim 10, wherein an authorization restriction requirement is displayed on a web page that includes information regarding the particular sale listing.
13. (Rejected) The method of claim 1, wherein seller vetting process information is displayed on a personalized web page of the seller that is linked to a web page of the particular sale listing.
14. (Rejected) The method of claim 1, wherein the seller authorizes only a predetermined currency to be used to purchase the particular sale listing that is listed for sale by the seller.

15. (Rejected) The method of claim 1, wherein the seller authorizes a predetermined geographic area, and wherein if the bidder is within the predetermined geographic area then the bidder is allowed, by the network-based auction facility, to bid on the particular sale listing that is listed for sale by the seller and if the bidder is outside the predetermined geographic area then the bidder is prevented from bidding on the particular sale listing.

16. (Rejected) A method to pre-approve a buyer for network-based shopping, the method including:

receiving an authorization communication, over a network, at a network-based shopping facility the authorization communication to authorize the buyer to buy a particular offering offered for sale by a seller; and  
at the network-based auction facility, automatically recording the buyer as authorized to buy the particular offering responsive to the authorization communication.

17. (Rejected) A system to pre-approve a bidder for network-based shopping, the system including:

a communications module to communicate between a network-based auction facility and a seller; and  
an authorization module to record a seller authorization of a bidder to bid on a particular sale listing via the communication.

18. (Rejected) The system of claim 17, wherein the authorization module requires the seller to authorize the bidder before the bidder bids on the particular sale listing.

19. (Canceled)

20. (Rejected) The system of claim 17, wherein the authorization communication includes a seller request to authorize bidders to bid on the particular sale listing.
21. (Previously Presented) The system of claim 17, wherein the seller can add and remove the pre-approval restriction multiple times during the auction pertaining to the particular sale listing.
22. (Rejected) The system of claim 20, wherein the communication module is to receive a request communication, the request communication including a bidder request to the seller to authorize the bidder to bid on the particular sale listing.
23. (Rejected) The system of claim 20, wherein the communications module is to provide access, to the seller, to a bidding history associated with the bidder and profile information associated with the bidder thereby to assist the seller in determining whether to authorize the bidder to bid on the particular sale listing.
24. (Rejected) The system of claim 23, wherein the bidding history and the profile information are provided by the network-based auction facility.
25. (Rejected) The system of claim 17, wherein the particular sale listing includes at least one sales listing from a group of sales listings including of a charity sales listing, an events sales listing and a holiday promotions sales listing.
26. (Rejected) The system of claim 17, wherein the network includes the Internet.
27. (Rejected) The system of claim 26, wherein the network-based auction facility includes an auction web site.

28. (Rejected) The system of claim 26, wherein an authorization restriction requirement is displayed on a view item web page.
29. (Rejected) The system of claim 17, wherein seller vetting process information is displayed on a personalized web page of the seller that is linked to a web page of the particular sale listing.
30. (Rejected) The system of claim 17, wherein the seller authorizes only a predetermined currency to be used to purchase the particular sale listing that is listed for sale by the seller.
31. (Rejected) The system of claim 17, wherein the seller authorizes a predetermined geographic area, and wherein if the bidder is within the predetermined geographic area then the bidder is allowed, by the network-based auction facility, to bid on the particular sale listing that is listed for sale by the seller and if the bidder is outside the predetermined geographic area then the bidder is prevented from bidding on the particular sale listing.
32. (Rejected) A system to pre-approve a buyer for network-based shopping, the system including:
- a communications module to communicate between a network-based shopping facility and a seller; and
  - an authorization module to record a seller authorization of a buyer to buy a particular offering via the communication.
33. (Rejected) A computer-readable medium having stored thereon a set of instructions to translate instructions, the set instructions, which when executed by a processor, cause the processor to perform a method to:

communicate between a network-based auction facility and a seller, the  
communication to authorize a bidder to bid on a particular sale listing that  
is listed for sale by the seller; and  
automatically record the bidder as authorized to bid on the particular sale listing  
responsive to the communication.

34. (Rejected) A system to pre-approve a bidder for network-based shopping  
including:

a first means for receiving a communication between a network-based auction  
facility and a seller; and  
a second means for automatically recording a seller authorization of a bidder to  
bid on a particular sale listing responsive to the communication.

35. (Rejected) A computer-readable medium having stored thereon a set of  
instructions to translate instructions, the set of instructions, which when executed by a  
processor, cause the processor to perform a method to:

communicate between a network-based auction facility and a seller, the  
communication to authorize a buyer to buy a particular offering offered  
for sale by the seller; and  
automatically record the buyer as authorized to buy the particular offering  
responsive to the communication.

**EVIDENCE APPENDIX**

None.

**RELATED PROCEEDINGS APPENDIX**

None.